

AMENDED IN SENATE MAY 25, 1999

AMENDED IN SENATE MAY 12, 1999

AMENDED IN SENATE APRIL 28, 1999

AMENDED IN SENATE APRIL 14, 1999

**SENATE BILL**

**No. 450**

**Introduced by Senator Speier**

February 17, 1999

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An act to amend Section 651 of, and to add Section 2259.7 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 450, as amended, Speier. Physicians and surgeons: advertising: plastic surgery.

Existing law prohibits licensed physicians and surgeons from including in any advertising a statement that he or she is certified or eligible for certification by a board or association unless that board or association meets specified criteria. Violation of this prohibition is a misdemeanor.

This bill would require physicians and surgeons who are certified by a board or association meeting that specified criteria and who so specify in any advertising to include in that advertising the full name of the certifying board, as specified. The bill would make another related change. The bill would also provide that a physician and surgeon licensed by the Medical Board of California who knowingly and intentionally violates these provisions may be cited and assessed an administrative fine, as specified. By changing the definition of

a crime, this bill would impose a state-mandated local program.

~~The bill would also provide that it is unprofessional conduct for require the board to adopt extraction standards in regard to liposuction procedures performed by a physician and surgeon who performs a body liposuction procedure outside of a general acute care hospital to extract more than 5,000cc per procedure, as defined, and would further provide that a violation of these standards constitutes unprofessional conduct.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 651 of the Business and  
2 Professions Code is amended to read:

3 651. (a) It is unlawful for any person licensed under  
4 this division or under any initiative act referred to in this  
5 division to disseminate or cause to be disseminated, any  
6 form of public communication containing a false,  
7 fraudulent, misleading, or deceptive statement or claim,  
8 for the purpose of or likely to induce, directly or  
9 indirectly, the rendering of professional services or  
10 furnishing of products in connection with the professional  
11 practice or business for which he or she is licensed. A  
12 “public communication” as used in this section includes,  
13 but is not limited to, communication by means of  
14 television, radio, motion picture, newspaper, book, or list  
15 or directory of healing arts practitioners.

16 (b) A false, fraudulent, misleading, or deceptive  
17 statement or claim includes a statement or claim that  
18 does any of the following:

19 (1) Contains a misrepresentation of fact.



1 (2) Is likely to mislead or deceive because of a failure  
2 to disclose material facts.

3 (3) Is intended or is likely to create false or unjustified  
4 expectations of favorable results.

5 (4) Relates to fees, other than a standard consultation  
6 fee or a range of fees for specific types of services, without  
7 fully and specifically disclosing all variables and other  
8 material factors.

9 (5) Contains other representations or implications  
10 that in reasonable probability will cause an ordinarily  
11 prudent person to misunderstand or be deceived.

12 (c) Any price advertisement shall be exact, without  
13 the use of phrases, including, but not limited to, “as low  
14 as,” “and up,” “lowest prices” or words or phrases of  
15 similar import. Any advertisement that refers to services,  
16 or costs for services, and that uses words of comparison  
17 shall be based on verifiable data substantiating the  
18 comparison. Any person so advertising shall be prepared  
19 to provide information sufficient to establish the accuracy  
20 of that comparison. Price advertising shall not be  
21 fraudulent, deceitful, or misleading, including statements  
22 or advertisements of bait, discount, premiums, gifts, or  
23 any statements of a similar nature. In connection with  
24 price advertising, the price for each product or service  
25 shall be clearly identifiable. The price advertised for  
26 products shall include charges for any related  
27 professional services, including dispensing and fitting  
28 services, unless the advertisement specifically and clearly  
29 indicates otherwise.

30 (d) Any person so licensed shall not compensate or  
31 give anything of value to a representative of the press,  
32 radio, television, or other communication medium in  
33 anticipation of, or in return for, professional publicity  
34 unless the fact of compensation is made known in that  
35 publicity.

36 (e) Any person so licensed may not use any  
37 professional card, professional announcement card, office  
38 sign, letterhead, telephone directory listing, medical list,  
39 medical directory listing, or a similar professional notice  
40 or device if it includes a statement or claim that is false,

1 fraudulent, misleading, or deceptive within the meaning  
2 of subdivision (b).

3 (f) Any person so licensed who violates this section is  
4 guilty of a misdemeanor. A bona fide mistake of fact shall  
5 be a defense to this subdivision but only to this  
6 subdivision.

7 (g) Any violation of this section by a person so licensed  
8 shall constitute good cause for revocation or suspension  
9 of his or her license or other disciplinary action.

10 (h) Advertising by any person so licensed may include  
11 the following:

12 (1) A statement of the name of the practitioner.

13 (2) A statement of addresses and telephone numbers  
14 of the offices maintained by the practitioner.

15 (3) A statement of office hours regularly maintained  
16 by the practitioner.

17 (4) A statement of languages, other than English,  
18 fluently spoken by the practitioner or a person in the  
19 practitioner's office.

20 (5) (A) A statement that the practitioner is certified  
21 by a private or public board or agency or a statement that  
22 the practitioner limits his or her practice to specific fields.  
23 For the purposes of this section, the statement of a  
24 practitioner licensed under Chapter 4 (commencing  
25 with Section 1600) who limits his or her practice to a  
26 specific field or fields, shall only include a statement that  
27 he or she is certified or is eligible for certification by a  
28 private or public board or parent association recognized  
29 by that practitioner's licensing board. A statement of  
30 certification by a practitioner licensed under Chapter 7  
31 (commencing with Section 3000) shall only include a  
32 statement that he or she is certified or eligible for  
33 certification by a private or public board or parent  
34 association recognized by that practitioner's licensing  
35 board.

36 (B) A physician and surgeon licensed under Chapter  
37 5 (commencing with Section 2000) by the Medical Board  
38 of California may include a statement that he or she limits  
39 his or her practice to specific fields, but shall not include  
40 a statement that he or she is certified or eligible for



1 certification by a private or public board or parent  
2 association, including, but not limited to, a  
3 multidisciplinary board or association, unless that board  
4 or association is (i) an American Board of Medical  
5 Specialties member board, (ii) a board or association with  
6 equivalent requirements approved by that physician and  
7 surgeon's licensing board, or (iii) a board or association  
8 with an Accreditation Council for Graduate Medical  
9 Education approved postgraduate training program that  
10 provides complete training in that specialty or  
11 subspecialty. A physician and surgeon licensed under  
12 Chapter 5 (commencing with Section 2000) by the  
13 Medical Board of California who is certified by an  
14 organization other than a board or association referred to  
15 in clause (i), (ii), or (iii) shall not use the term "board  
16 certified" or similar term in reference to that  
17 certification. A physician or surgeon licensed under  
18 Chapter 5 (commencing with Section 2000) by the  
19 Medical Board of California who is certified by a board or  
20 association referred to in clause (i), (ii), or (iii) shall not  
21 use the term "board certified" or similar term unless the  
22 full name of the certifying board is also used and given  
23 comparable prominence with the term "board certified"  
24 or similar term in the statement.

25 For purposes of this subparagraph, a "multidisciplinary  
26 board or association" means an educational certifying  
27 body that has a psychometrically valid testing process, as  
28 determined by the Medical Board of California, for  
29 certifying medical doctors and other health care  
30 professionals that is based on the applicants' education,  
31 training, and experience.

32 For purposes of the term "board certified," as used in  
33 this subparagraph, the terms "board" and "association"  
34 means an organization that is an American Board of  
35 Medical Specialties member board, an organization with  
36 equivalent requirements approved by a physician and  
37 surgeon's licensing board, or an organization with an  
38 Accreditation Council for Graduate Medical Education  
39 approved postgraduate training program that provides  
40 complete training in a specialty or subspecialty.

1 The Medical Board of California shall adopt regulations  
2 to establish and collect a reasonable fee from each board  
3 or association applying for recognition pursuant to this  
4 subparagraph. The fee shall not exceed the cost of  
5 administering this subparagraph. Notwithstanding  
6 Section 2 of Chapter 1660 of the Statutes of 1990, this  
7 subparagraph shall become operative July 1, 1993.  
8 However, an administrative agency or accrediting  
9 organization may take any action contemplated by this  
10 subparagraph relating to the establishment or approval of  
11 specialist requirements on and after January 1, 1991.

12 (C) A doctor of podiatric medicine licensed under  
13 Chapter 5 (commencing with Section 2000) by the  
14 Medical Board of California may include a statement that  
15 he or she is certified or eligible or qualified for  
16 certification by a private or public board or parent  
17 association, including, but not limited to, a  
18 multidisciplinary board or association, if that board or  
19 association meets one of the following requirements: (i)  
20 is approved by the Council on Podiatric Medical  
21 Education, (ii) is a board or association with equivalent  
22 requirements approved by the California Board of  
23 Podiatric Medicine, or (iii) is a board or association with  
24 the Council on Podiatric Medical Education approved  
25 postgraduate training programs that provide training in  
26 podiatric medicine and podiatric surgery. A doctor of  
27 podiatric medicine licensed under Chapter 5  
28 (commencing with Section 2000) by the Medical Board  
29 of California who is certified by an organization other  
30 than a board or association referred to in clause (i), (ii),  
31 or (iii) shall not use the term “board certified” in  
32 reference to that certification.

33 For purposes of this subparagraph, a “multidisciplinary  
34 board or association” means an educational certifying  
35 body that has a psychometrically valid testing process, as  
36 determined by the California Board of Podiatric  
37 Medicine, for certifying doctors of podiatric medicine  
38 that is based on the applicant’s education, training, and  
39 experience. For purposes of the term “board certified,”  
40 as used in this subparagraph, the terms “board” and

1 “association” mean an organization that is a Council on  
2 Podiatric Medical Education approved board, an  
3 organization with equivalent requirements approved by  
4 the California Board of Podiatric Medicine, or an  
5 organization with a Council on Podiatric Medical  
6 Education approved postgraduate training program that  
7 provides training in podiatric medicine and podiatric  
8 surgery.

9 The California Board of Podiatric Medicine shall adopt  
10 regulations to establish and collect a reasonable fee from  
11 each board or association applying for recognition  
12 pursuant to this subparagraph, to be deposited in the  
13 State Treasury in the Podiatry Fund, pursuant to Section  
14 2499. The fee shall not exceed the cost of administering  
15 this subparagraph.

16 (6) A statement that the practitioner provides services  
17 under a specified private or public insurance plan or  
18 health care plan.

19 (7) A statement of names of schools and postgraduate  
20 clinical training programs from which the practitioner  
21 has graduated, together with the degrees received.

22 (8) A statement of publications authored by the  
23 practitioner.

24 (9) A statement of teaching positions currently or  
25 formerly held by the practitioner, together with  
26 pertinent dates.

27 (10) A statement of his or her affiliations with hospitals  
28 or clinics.

29 (11) A statement of the charges or fees for services or  
30 commodities offered by the practitioner.

31 (12) A statement that the practitioner regularly  
32 accepts installment payments of fees.

33 (13) Otherwise lawful images of a practitioner, his or  
34 her physical facilities, or of a commodity to be advertised.

35 (14) A statement of the manufacturer, designer, style,  
36 make, trade name, brand name, color, size, or type of  
37 commodities advertised.

38 (15) An advertisement of a registered dispensing  
39 optician may include statements in addition to those  
40 specified in paragraphs (1) to (14), inclusive, provided

1 that any statement shall not violate subdivision (a), (b),  
2 (c), or (e) of this section or any other section of this code.

3 (16) A statement, or statements, providing public  
4 health information encouraging preventative or  
5 corrective care.

6 (17) Any other item of factual information that is not  
7 false, fraudulent, misleading, or likely to deceive.

8 (i) Each of the healing arts boards and examining  
9 committees within Division 2 shall adopt appropriate  
10 regulations to enforce this section in accordance with  
11 Chapter 3.5 (commencing with Section 11340) of Part 1  
12 of Division 3 of Title 2 of the Government Code.

13 Each of the healing arts boards and committees and  
14 examining committees within Division 2 shall, by  
15 regulation, define those efficacious services to be  
16 advertised by business or professions under their  
17 jurisdiction for the purpose of determining whether  
18 advertisements are false or misleading. Until a definition  
19 for that service has been issued, no advertisement for that  
20 service shall be disseminated. However, if a definition of  
21 a service has not been issued by a board or committee  
22 within 120 days of receipt of a request from a licensee, all  
23 those holding the license may advertise the service. Those  
24 boards and committees shall adopt or modify regulations  
25 defining what services may be advertised, the manner in  
26 which defined services may be advertised, and restricting  
27 advertising that would promote the inappropriate or  
28 excessive use of health services or commodities. A board  
29 or committee shall not, by regulation, unreasonably  
30 prevent truthful, nondeceptive price or otherwise lawful  
31 forms of advertising of services or commodities, by either  
32 outright prohibition or imposition of onerous disclosure  
33 requirements. However, any member of a board or  
34 committee acting in good faith in the adoption or  
35 enforcement of any regulation shall be deemed to be  
36 acting as an agent of the state.

37 (j) The Attorney General shall commence legal  
38 proceedings in the appropriate forum to enjoin  
39 advertisements disseminated or about to be disseminated  
40 in violation of this section and seek other appropriate



1 relief to enforce this section. Notwithstanding any other  
2 provision of law, the costs of enforcing this section to the  
3 respective licensing boards or committees may be  
4 awarded against any licensee found to be in violation of  
5 any provision of this section. This shall not diminish the  
6 power of district attorneys, county counsels, or city  
7 attorneys pursuant to existing law to seek appropriate  
8 relief.

9 (k) A physician and surgeon licensed pursuant to  
10 Chapter 5 (commencing with Section 2000) by the  
11 Medical Board of California who knowingly and  
12 intentionally violates this section may be cited and  
13 assessed an administrative fine not to exceed ten  
14 thousand dollars (\$10,000) per event. Section 125.9 shall  
15 govern the issuance of this citation and fine except that  
16 the fine limitations prescribed in paragraph (3) of  
17 subdivision (b) of Section 125.9 shall not apply to a fine  
18 under this subdivision.

19 SEC. 2. Section 2259.7 is added to the Business and  
20 Professions Code, to read:

21 2259.7. ~~A~~ *The Medical Board of California shall adopt*  
22 *extraction standards in regard to body liposuction*  
23 *procedures performed by a physician and surgeon who*  
24 ~~performs a body liposuction procedure~~ outside of a  
25 general acute care hospital, as defined in Section 1250 of  
26 the Health and Safety code, ~~shall not extract more than~~  
27 ~~5,000cc in total aspirate volume per individual procedure.~~  
28 A violation of this section constitutes unprofessional  
29 conduct.

30 SEC. 3. No reimbursement is required by this act  
31 pursuant to Section 6 of Article XIII B of the California  
32 Constitution because the only costs that may be incurred  
33 by a local agency or school district will be incurred  
34 because this act creates a new crime or infraction,  
35 eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section  
37 17556 of the Government Code, or changes the definition

- 1 of a crime within the meaning of Section 6 of Article
- 2 XIII B of the California Constitution.

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